

Jharkhand State Electricity Regulatory Commission Ranchi

FORM OF PROCEEDING

Case No. 12 of 2012

Tata Power Company Limited (TPCL) Petitioner

Sl. No.	Date of proceeding	Proceedings of the Commission with signature	Office action taken with date
05.	21.11. 2012	<p style="text-align: center;"><u>ORDER</u></p> <p>The Tata Power Co. Limited (TPCL), referred to herein after as the Tata Power or the petitioner, has filed a review petition under Section 61,62,64 and 86 of the Electricity Act, 2003 read with JSERC (Conduct of Business) Regulations, 2011 and JSERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2010 for the approval of Raw Water Charges pertaining to the sale of electricity from 2 X 120 MW from Unit No. 2 & 3 to Tata Steel - the distribution licensee, for the Multi Year Tariff (MYT) control period of FY 2012-13 to 2015-16.</p> <p>The petitioner Tata Power has prayed in the review petition to admit the petition, approve the payment of Raw Water Charges for the FY 2011-12 and also approve Raw Water Charges based on the existing rate as projected for Jojobera Unit No. 2 & 3 for each year of the control period for the FY 2012-13 to 2015-16. The petitioner also prayed that it be given an opportunity to present their case before the final order of the Commission is passed.</p> <p>The petitioner was given an opportunity to present their case, and was heard. Though the petitioner has said in its review petition that the petition is filed under Section 61, 62, 64 and 86 of the Electricity Act, 2003, it seems, the petitioner has</p>	

inadvertently forgot to mention Sec. 94 of the Electricity Act, 2003 which empowers the Commission to review its own orders.

Section 61 empowers the appropriate Commission to specify the terms and conditions for determination of tariff. Section 62 provides for determination of tariff whereas Sec. 64 lays down the procedure for tariff order. Sec. 86 of the Act details the functions of the State Commission. Sec. 94 of the Act empowers the Commission to review its own orders. For convenience, Sec. 94 is reproduced as under :

“94. Powers of Appropriate Commission

(1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely: -

- (a) summoning and enforcing the attendance of any person and examining him on oath;***
- (b) discovery and production of any document or other material object producible as evidence;***
- (c) receiving evidence on affidavits;***
- (d) requisitioning of any public record;***
- (e) issuing commission for the examination of witnesses;***
- (f) reviewing its decisions, directions and orders;***
- (g) any other matter which may be prescribed.***

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.

(3) The Appropriate Commission may authorise any person, as it deems fit, to represent the interest of the consumers in the proceedings before it.”

Be as it may, the Commission has admitted the petition, and as stated earlier, have heard the petitioner at length.

The issue of water charges was raised during the course of public hearing which was held on 14th April 2012 in Jamshedpur, wherein 46 stakeholders participated. One of the issues raised by an objector was about the Raw Water Charges. This issue has been implicitly dealt with in MYT order for Tata Power for the FY 2012-13 to 2015-16. We

deem it appropriate to reproduce the relevant Paras on this issue of the aforesaid Tariff

Order as under :

“Water Charges

4.35 The Objector submitted that there is no expense of the Petitioner on water because there is an agreement between Tata Group and the State Government w.r.t tax exemption on the expenses incurred on water, power and roads by companies.

Petitioner’s response

4.36 The Petitioner submitted that it procures water from JUSCO and the payment is done against the monthly bills at the specified water rate. The Petitioner has further submitted that it has considered the actual water rate in the various computations produced in the Petition.

Commission’s view

4.37 The Petitioner requested the Commission for allowance of Water Charges as a part of the O&M expenses claimed by it for FY 2012-13 to FY 2015-16. The Petitioner submitted that the Water Charges being paid by it to JUSCO will increase sharply from FY 2012-13 onwards due to the increase in water charges by 92% on account of higher taxes being levied by Govt. of Jharkhand.

4.38 The average annual Raw Water Expenses claimed by the Petitioner during the MYT Control Period have been summarized in the table below.

Table 13: Water expenses for Unit 2 and Unit 3 during Control Period

	Units	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Gross Generation (Unit 2&3)	MU	1787	1808	1829	1855
Quantity of Water	m ³	6075936	6147418	6218899	6307615
Raw Water Charges	Rs./ m ³	5.52	5.52	5.52	5.52
Raw Water Expenses	Rs. Cr	3.35	3.39	3.43	3.48

4.39 In order to validate the claim of the Petitioner, that it is indeed paying Water Charges to JUSCO, the Commission orally asked the Petitioner to submit proof of payment in form of receipt of payments made towards Water Charges. However, there was no response from the Petitioner regarding the same. Subsequently the Commission wrote a letter to the Petitioner vide Letter No. JSERC/Legal/38 of 2011/196 dated 28th May 2012. However, the Petitioner in its reply dated May 28, 2012 submitted the bills raised by JUSCO on Tata Power for payment of Water Charges only. No receipt of payment made against those bills was submitted to the Commission.

4.40 The Commission took a serious view of the matter and conveyed to the Petitioner both over the telephone and in writing), that if the Petitioner fails to provide the details of receipt of payment made to JUSCO towards Water Charges, the Commission shall be forced to take an adverse view in the matter.

4.41 In response, the Petitioner, submitted before the Commission a list of ‘Invoice Numbers’ for the month of May 2011; and the ‘Bill Amt’ and ‘Bill Paid’ against those invoices. However, no actual receipt of the payment made to JUSCO, signed and validated by the representatives of JUSCO, was submitted to the Commission.

4.42 Therefore, the Commission deems the reply given by the Petitioner to be unsatisfactory and has decided to disallow the Water Charges as claimed by the Petitioner for FY 2012-13 to FY 2015-16.

4.43 The Commission may allow the actual Water Charges incurred by the Petitioner during the year at the time of Annual Performance Review at the end of the year provided the Petitioner is able to provide satisfactory evidence in support of its claim.”

A perusal of the aforesaid Paras makes it abundantly clear that the Commission, while working out the tariff order, made all possible efforts to get information and documents as a proof that the petitioner has paid the raw water charges . However, the information provided by the petitioner was found wanting and as such the Commission thought it appropriate to defer the issue of allowing the payment of Raw Water Charges till the petitioner submits full and complete data and documentary evidence as proof of payment.

In the opinion of the Commission, the petitioner has to understand the difference between the audited accounts and the regulatory accounts. In other words, even if a particular expenditure has been shown in the audited accounts dully certified by the Chartered Accountant, it does not mean that it has to be allowed as a pass through expenditure by the Commission, if the Commission is not convenienced about the genuineness of the said expenditure. The Hon’ble Appellate Tribunal for Electricity has held that; ***the State Commission while examining the accounts is not bound by the audited accounts. The accounts may be genuine as per the audited report but it is the State Commission which has to examine the accounts to ascertain the performance of the licensee in relation to the desirability of the expenditure in the interest of the consumers. (Kerala State Electricity Board Vrs. Kerala State Electricity Regulatory***

Commission – Appeal No. 177 of 2009).

As emphasized by the Hon'ble APTEL in the aforesaid Judgment, the Commission at the time of working out the Tariff Order was only trying to understand the issue of payment of water charges in detail in order to protect the interest of the consumers.

The petitioner has now filed not only the bills of the Raw Water Charges rather the proof of payment as well. The additional information given to the Commission relates to all the five Units of the petitioner including water used for disposal of the Fly Ash of Unit 5 along with the bottom ash generated by the unit to the ash pond. It is pertinent to mention here that out of the aforesaid five Units of the petitioner, only two units i.e Unit No. 2 & 3 are under the regulatory jurisdiction of the Commission. In view of this, the Commission was trying to understand how to apportion the Raw Water Charges for the aforesaid two Units. The Commission enquired from the petitioner whether it is feasible to have a separate water meter for the aforesaid two units i.e Unit No. 2 & 3. The petitioner after getting the matter examined by its technical expert, informed the Commission in writing that it is not technically feasible to install a separate water meter for Unit No. 2& 3.

Since, as discussed above, it does not seem technically feasible to install a separate water meter to measure the quantum of raw water consumption in generation of electricity by Unit No. 2 & 3 , as submitted by the petitioner, the Commission is taking the consumption of Raw Water of the aforesaid all the five units in the ratio of generation of electricity by them and apportioning the same per generating unit.

As the petitioner has submitted the proof of payment of Raw Water Charges for the FY 2011-12, and has also filed an affidavit that the Raw Water Consumption, in question, relates to the generation of electricity by the aforesaid five

units and for related activities and that the raw water is not used for any other purposes, and as such the same is acknowledged. Further the Commission has provisionally arrived at and allows the Raw Water Consumption and Raw Water Charges for Unit No. 2 & 3 as under subject to true up at the end of each Financial Year.

	Unit 2				Unit 3			
	FY13	FY14	FY15	FY16	FY13	FY14	FY15	FY16
Gross Gen. (MU)	894	894	894	896	894	894	894	896
Specific Raw Water Consumption (m3/Mwh)	3.24	3.24	3.24	3.24	3.27	3.27	3.27	3.27
Raw Water Cons (m3)	2898774.5	2898774.5	2898774.5	2906716.3	2918213	2918213	2918213	2926208.1
Rate of Raw Water Charges (Rs/m3)	5.52	5.52	5.52	5.52	5.52	5.52	5.52	5.52
Raw Water Charges (Rs Cr)	1.60	1.60	1.60	1.60	1.61	1.61	1.61	1.62

	FY13	FY14	FY15	FY16
Total Generation (for Unit 2 & 3)	1787	1787	1787	1792
Total Raw Water Charges (Rs Cr) (for Unit 2 & 3)	3.21	3.21	3.21	3.22

In view of the aforesaid discussion the prayer of the petitioner is allowed.

Sd/-
Member (E)

Sd/-
Chairperson